83 580

NO. _____

IN THE SUPREME COURT
OF THE UNITED STATES

OCTOBER TERM, 1983

CORNELIUS DENNIS BRISLAWN, JR.,

PETITIONER,

V.

BEVERLY JOAN GATEWOOD BRISLAWN,

RESPONDENT,

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF ALABAMA

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IN THE SUPREME COURT OF
THE UNITED STATES

OCTOBER TERM, 1983

CORNELIUS DENNIS BRISLAWN, JR.,

Petitioner,

v.

BEVERLY JOAN GATEWOOD BRISLAWN,

Respondent.

PETITION FOR WRIT OF CERTIORARI

QUESTION PRESENTED

Did the Supreme Court of Alabama err in holding that Cornelius Dennis Brislawn, Jr., did have minimum contacts with Alabama sufficient to allow the courts of Alabama to exercise personal jurisdiction over him to decide paternity and child

support?

PARTIES

The caption contains the names of all parties.

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TABLE OF AUTHORITIES

OPINIONS BELOW

The opinion of the Supreme Court of Alabama is reported as Brislawn v. Brislawn, _____ So.2d _____, No. 82-9, (Ala. June 3, 1983).

JURISDICTION

The judgment of the Supreme Court of Alabama was made and entered on June 3, 1983. On July 8, 1983, an order was entered which denied the Petitioner's request for rehearing. Copies of both orders are appended to this Petition in the Appendix.

The jurisdiction of this court is invoked under 28 U.S.C. §1257(3).

CONSTITUTIONAL PROVISIONS

The constitutional provision which this case involves is the United States Constitution, Amendment 14, which is set out as follows:

"All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

This is a divorce case. The basic facts are as follows:

The parties were married to each other on December 29, 1978, at Fort Benning, Georgia, where the husband was stationed as an Army officer. He lived on post at that time. The wife had resided in Columbus, Georgia, for approximately two months. The month prior to the marriage the wife moved to her parents' home in Russell County,

Alabama, and was residing in Russell County, Alabama, at the time of the marriage. She moved there in anticipation of her marriage and because of the Petitioner's pending assignment to Germany. The wife was a legal resident of Alabama, and the husband was a legal resident of the State of Washington at the time of the marriage and at the time of the trial in February, 1982.

The parties spent their wedding night in Columbus, Georgia. They stayed the next ten days or so at the home of the wife's parents, until January 9, 1979, when the husband left for Germany for a three-year tour of duty. The wife testified that their approximate ten-day stay at her parents' home was temporary, and that the husband did not change his legal residence, did not buy any property in Alabama, and did not apply for an

Alabama Driver's License. During that ten-day period, the husband did nothing in Alabama other than come to his wife's parents' home after work each day. These ten days which he spent in the home of the wife's parents in January, 1979, constituted the only contact which the Petitioner had with the State of Alabama at any time. No problems or difficulties arose between the parties prior to the time he went overseas.

In February, 1979, the wife joined the husband in Germany where they lived together for approximately eighteen months, until August, 1980, when the parties separated and the wife returned to her parents' home in Russell County, Alabama. He remained in Germany until December, 1981. A child was born to the wife on April 16, 1981.

On May 8, 1981, the wife filed a complaint for divorce, wherein she requested, among other things, child support for the minor child born to her during the marriage. The complaint for divorce was served on Petitioner approximately thirty-one months after the Petitioner left for Germany.

The husband was served by certified mail with a copy of the summons and complaint for divorce while stationed in Germany. He was served on August 17, 1981.

Due to the husband's military duties and his being overseas, his answer was not timely filed and a judgment of default was entered against him. The husband moved the trial court to set aside the default which the trial court agreed to do, but only upon the condition that the husband first

dismiss a suit for divorce which he had filed and which was pending in the State of Washington. The husband dismissed his Washington suit for divorce and was allowed to file his answer in the Alabama trial court.

In his answer to the complaint for divorce the husband raised as a defense that Alabama lacked personal jurisdiction over him. He alleged that he did not have sufficient contacts with the State of Alabama necessary to confer upon the courts of Alabama in personam jurisdiction over his person by reason of extra territorial service of process upon him by certified mail.

This jurisdictional issue was again raised by written motion to dismiss filed at the conclusion of the wife's case in chief. This motion to dismiss was denied by the trial court. The answer of the husband and the

motion to dismiss filed by him both timely raised for the trial court's consideration the federal question of lack of in personam jurisdiction. The answer appears in the record at pages 28-34, and the motion to dismiss for lack of personal jurisdiction is in the record at pages 52-53. Copies of both are included in the Appendix.

The trial court granted the divorce, determined the Petitioner to be the father of the child and ordered him to pay support and attorney's fees. The Petitioner perfected an Appeal to the Alabama Court of Civil Appeals and raised therein the issue of lack of in personam jurisdiction. On September 1, 1982, the Court of Civil Appeals agreed with the Petitioner and held that the Petitioner lacked sufficient minimum contacts with the State of Alabama so as to confer in

personam jurisdiction. The Court of Civil Appeals reversed the trial court on this issue. A copy of this opinion is included in the Appendix.

Thereafter, the wife sought and obtained a Writ of Certiorari to the Court of Civil Appeals, and on June 3, 1983, the Supreme Court of Alabama reversed the Court of Civil Appeals by holding that the husband did have sufficient minimum contacts with Alabama to confer upon the courts of Alabama in personam jurisdiction over the husband. The husband filed a request for rehearing and on July 8, 1983, the request for rehearing was denied without opinion.

ARGUMENT

The decision below should be reviewed because it erroneously concludes that Petitioner had sufficient minimum

contacts with Alabama to confer upon the Alabama courts in personam jurisdiction over the Petitioner. The decision below is in conflict with the decision of this Court in Kulko v. Superior Court of California, 436 U.S. 84, 98 S. Ct. 1690, 56 L. Ed. 2d 132 (1978). The decision below is also in conflict with the decisions of other state courts of last resort, see Brondum v. Cox, 292 N.C. 192, 232 S.E. 2d 687 (1977); Watkins v. Watkins, 194 Tenn. 621, 254 S.W. 2d 735 (1953).

The exercise of in personam jurisdiction by the Alabama courts over the Petitioner, a Washington domiciliary, violates the Due Process Clause of the Fourteenth Amendment. A defendant must have certain minimum contacts with the forum state such that the maintenance of a suit against him does not offend "traditional notions

of fair play and substantial justice" International Shoe Co., v. Washington, 326 U.S. 316, 66 S.Ct. at 158. In the instant case the Petitioner's contact with Alabama was very limited, consisting of a ten-day stay at the home of his wife's parents, during which time his only activity in Alabama consisted of coming to the home of his wife's parents after work each day. His stay was only temporary. No difficulties arose between the parties during the ten days, and the Petitioner has not been in Alabama either before or since except for the trial of the case.

The parties separated after living in Germany for eighteen months. The wife returned to her parents' home and a child was born to her. Approximately one year after the wife returned to Alabama, the husband was served with a suit for divorce and request for support for the minor child.

Approximately thirty-one months elapsed from the Petitioner's presence in Alabama until he was served by certified mail while in Germany.

The facts of this case are very similar to the facts in Kulko v. Superior Court of California, supra. The Petitioner submits that the Kulko case is dispositive of the case at bar and requires that the decision by the Supreme Court of Alabama be reversed. The basic facts in Kulko are as follows: Ezra Kulko married Sharon Kulko in California during a three-day stopover in California by Ezra Kulko while he was in route from a military base in Texas to a tour of duty in Korea. The marital domicile was in the state of New York. Following his tour of duty Mr. Kulko had a twenty-four hour stopover on his way back to rejoin his family in New York. Subsequently, the Kulkos separated and the wife moved to

California and the husband stayed in New York. The children eventually wound up in California with the mother. The father had actually sent one child to reside with the mother in California. Mrs. Kulko then brought an action against Mr. Kulko in California requesting a modification of a divorce decree to increase child support. The California courts rejected Mr. Kulko's objections to in personam jurisdiction and this Court reversed the California Court on the Due Process issue.

The rule of law which has been firmly established, and which is controlling in this case, is that in order for a Court to enter a valid judgment imposing a personal obligation on a defendant the court must have jurisdiction over the person of the defendant. Pennoyer v. Neff, 95 U.S. 714, 732-733, 24 L.Ed. 565, 572 (1878); International Shoe v. Washington, supra. The existence of in personam jurisdiction,

or personal jurisdiction, depends upon the Defendant having sufficient contacts with the forum state, so that it is fair and reasonable to require defense of the action in the forum state. Milliken v. Meyer, 311 U.S. 457, 463-464, 61 S.Ct. 339, 342-343, 85 L.Ed. 278 (1940).

The constitutional standards when applied to the facts of the case under review leads to the conclusion that the Alabama Court has extended the application of the minimum-contacts test beyond the acceptable limits, and, as in Kulko, it constitutes an unwarranted extension of International Shoe. If the action of the Alabama Supreme Court is sustained an unfair result would obviously develope.

The Supreme Court of Alabama has not applied the constitutional test. Rather, the Court's opinion adopted another test, one which has not been sanctioned. The Supreme Court of Alabama did not consider

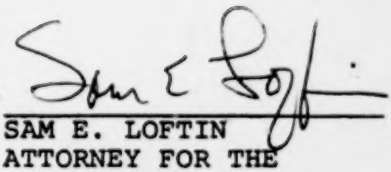
the quality and nature of the Petitioner's activities in the state. Instead, the Court concluded that since Alabama was the last place in the United States where the parties had lived then Alabama was a proper forum. An analogy can show the error of the logic used by the Supreme Court of Alabama. Suppose that two non-residents of Alabama are married in a state other than Alabama and are to reside in Mexico. Before moving to Mexico, the husband and wife spend several days in Alabama visiting friends or vacationing. Two or three years later the wife leaves the husband and returns to Alabama where she institutes suit for divorce and serves the husband by certified mail. She asks for alimony. Assuming these facts, and in light of the opinion below in the case at bar, the husband would be required to defend himself in Alabama.

In the present case, the husband never conducted any activity in the State of Alabama sufficient to allow in personam jurisdiction over him. As stated in Hanson v. Denckla, 357 U.S. 235, 78 S.Ct. 1228, 2 L.Ed.2d 1283, (1958), "It is essential in each case that there be some act by which the Defendant purposely avails himself of the privilege of conducting activities in the forum state". The Petitioner simply did not have contacts with Alabama which were sufficient to pass constitutional muster.

CONCLUSION

Petitioner's constitutional rights to due process under the fourteenth amendment have been violated. To remedy this obvious injustice the Petitioner humbly requests that this Honorable Court grant

this Petition and reverse the decision below.

BY: 

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APPENDIX

THE STATE OF ALABAMA
JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

OCTOBER, 1982-1983

Ex parte:
Beverly Joan Gatewood Brislawn

PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF CIVIL APPEALS

(Re: Cornelius Dennis Brislawn, Jr.

v.

Beverly Joan Gatewood Brislawn)

82-9

FAULKNER, JUSTICE.

This is a review by certiorari of the Court of Civil Appeals' decision in a divorce case. The facts are as follows: On December 29, 1978, Beverly Joan Gatewood and Cornelius Dennis Brislawn were married at Fort Benning, Georgia, where the husband was stationed as an army officer. After spending their wedding night in Columbus, Georgia, the parties

stayed at the home of the wife's parents in Alabama for ten days. Subsequently, and up until the time the parties were separated in August, 1980, the couple lived in Germany. At that time the wife returned to her parents' home in Alabama, where a child was born. Through an Alabama circuit court, the wife sought a divorce and other affirmative relief. The trial court granted a divorce, gave custody of the minor child to the wife, determined the husband to be the father, and required the husband to pay child support and attorney's fees. The Court of Civil Appeals found that the trial court properly granted a divorce, but reversed the trial court's judgment as to the matters concerning paternity, custody, support, and attorney's fees.

The wife filed an application for rehearing, which was denied. This court

granted her petition for writ of certiorari and subsequently heard oral arguments.

The issues presented in this case are:

(1) Whether the Court of Civil Appeals erred in holding that Cornelius Dennis Brislawn, Jr., did not have the minimum contacts with Alabama necessary to give the Circuit Court of Russell County personal jurisdiction over him to decide child support and attorneys fees; and

(2) Whether the Court of Civil Appeals erred in holding that in personam jurisdiction is required over the husband, even where the mother and minor child are residents of Alabama, in order to establish paternity, custody

and control of the minor child and any other matters pertaining to the child in any respect.

First, we will address the issue of whether Mr. Brislawn had sufficient minimum contacts with this state "so that the prosecution of the action against (him) in this state is not inconsistent with the constitution of this state or the constitution of the United States..." Rule 4.2(a)(1)(B), A.R.Civ.P.

We dealt with this principle in Mann v. Frank Hrubetz & Co. Inc., 361 So. 2d 1021 (ala. 1978), where we quoted from International Shoe Co. v. State of Washington, 326 U.S. 310, 316, 66 S.Ct. 154, 158, 90 L.Ed. 95 (1945):

> "[D]ue process requires only that in order to subject a defendant to a judgment in personam, if he be not present within the territory of the forum, he have certain

minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'"...

The test requiring that defendant have certain minimum contacts with the forum state such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice is not susceptible of mechananical application; rather, the facts of each case must be weighed to determine whether the requisite affiliating circumstances are present. Kulko v. Superior Court of California, 436 U.S. 84, 98 S.Ct. 1690, 56 L.Ed.2d 132 (1978). Thus, we must determine if Mr. Brislawn had certain minimum contacts with this state so that the maintenance of the suit does not offend "traditional notions of fair play and substantial justice," by examining the

facts in this case.

In this case, the Court of Civil Appeals held that Mr. Brislawn did not have the required minimum contacts. That court cited Corcoran v. Corcoran, 353 So. 2d 805 (Ala. Civ. App. 1978), as factual authority for this conclusion, stating that in this case the husband had far less contact with Alabama than did the husband in Corcoran.

We opine that Corcoran is distinguishable from this case. In Corcoran, the last place in the United States that the parties were domiciled together as husband and wife was in North Carolina, not Alabama. They had not lived in Alabama for over four years before the wife returned to Alabama to file for a divorce.

Unlike Corcoran, the State of Alabama represents the only place in the United States where the Brislawns lived together as husband and wife, except for their

wedding night, which they spent in Columbus, Georgia. They moved from Alabama to Germany, separated in Germany, and the wife returned to Alabama, where the child was born. To say that Corcoran had more contact with Alabama than Brislawn for purposes of jurisdiction overlooks this distinction between the two factual situations.

The rule of "minimum contacts" has generally been given broad interpretation. For instance, in Calaqaz v. Calhoun, 309 F.2d 248 (5th Cir. 1962), it was pointed out that mere correspondence with persons in a state may establish sufficient contacts with the state to subject a nonresident to a suit in that state on a cause of action arising out of those contacts. Also, in McGee v. International Life Insurance Co., 355 U.S. 220, 78 S.Ct. 199, 2 L.Ed.2d 223 (1957), it was held that state jurisdiction over a

foreign corporation may be sustained on the basis of a single transaction--a single insurance contract--within the forum state.

We are careful to note, however, that the United States Supreme Court in Hanson v. Denckla, 357 U.S. 235, 78 S.Ct. 1228, 2 L.Ed.2d 1283 (1958), recognized the trend of expansion of in personam jurisdiction over nonresidents, but warned that "it is a mistake to assume that this trend heralds the eventual demise of all restrictions on the personal jurisdiction of state courts."

Under the facts of this case we have determined that it is reasonable to require Mr. Brislawn to come to Alabama to conduct his defense on the matters concerning paternity, custody, support, and attorneys fees. The facts of this case establish the necessary minimum contacts.

REVERSED AND REMANDED.

TORBERT, C. J., JONES, ALMON SHORES, EMBRY, BEATTY AND ADAMS, J. J., CONCUR.

MADDOX, J., DISSENTS.

MAILING ADDRESS:

TELEPHONE: 832-8400

OFFICE OF
CLERK OF THE SUPREME COURT
STATE OF ALABAMA
MONTGOMERY

July 8, 1983

Re: 82-9
Ex Parte: Beverly Joan Gatewood Brislawn
PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS
(Re: Cornelius Dennis Brislawn, Jr. vs. Beverly Joan Gatewood Brislawn)
Appellant Appellee

You are hereby notified that the following indicated action was taken in the above cause by the Supreme Court today: *

_____ Appeal docketed. Future correspondence should refer to the above number.

_____ Court Reporter granted additional time to file reporter's transcript to and including

_____ Clerk/Register granted additional time to file clerk's record/record on appeal to and including

_____ Appell_____ granted 7 additional days to file briefs to and including

_____ Appellant(s) granted 7 additional days to file reply briefs to and including

_____ Record on Appeal filed

_____ Appendix Filed

_____ Submitted on Briefs

_____ Petition for Writ of Certiorari denied. No opinion.

XXXXX Application for rehearing overruled. No opinion written on rehearing.

_____ Permission to file amicus curiae briefs granted

_____

7-8-83
vb

Dorothy F. Norwood

-29- Acting Clerk, Supreme Court of Alabama

THE STATE OF ALABAMA
JUDICIAL DEPARTMENT

THE COURT OF CIVIL APPEALS

SPECIAL TERM, 1982

Civ. 3222

Cornelius Dennis Brislawn, Jr.

v.

Beverly Joan Gatewood Brislawn

Appealed From Russell
County Circuit Court

SCRUGGS, Retired Circuit Judge

This is a divorce case.

On December 29, 1978, the parties were married at Fort Benning, Georgia, where the husband was stationed as an army officer. He lived on the post at that time. The wife had resided in Columbus, Georgia, for approximately two months, but, for the month preceding their marriage, she had resided with her

parents in Russell County, Alabama, having moved there in anticipation of her marriage and of his already pending assignment to Germany. The wife was a legal resident of Alabama. The husband's domicile at the time of the marriage and at the time of the trial was in the State of Washington.

After spending their wedding night in Columbus, Georgia, the parties stayed at the home of the wife's parents until January 9, 1979, when he left for his new station in Germany for a three-year tour of duty. The wife testified that their approximate ten-day stay at her parents' home was temporary and that the husband did not change his legal residence, did not buy any Alabama property of any nature, did not register to vote in Alabama, and did not apply for an Alabama Driver's License. During that ten-day period, he did not act in Alabama other than to come to

her parents' home after work each day. Those few days which he spent in the home of the wife's parents constituted the only time that the husband ever lived in Alabama and it was the only contact with this state which is established by the evidence. There is no evidence that any problem or difficulty occurred between this couple before he went overseas.

The wife joined her husband in Germany in February, 1979, where they lived together until August, 1980, when the parties separated and the wife returned to her parents' home. The husband remained in Germany until December, 1981. A child was born on April 16, 1981. At the time of the February 1982 trial he was again stationed at Fort Benning.

Through an Alabama Circuit Court, the wife sought and obtained a divorce and

other affirmative relief. The husband was served with a copy of the summons and complaint by certified mail while he was still in Germany.

The trial court properly granted a divorce. The wife, by allegations and proof, has shown compliance with the six months residence requirement of §30-2-5, Code 1975. As to the divorce, the circuit court had jurisdiction over the wife as an Alabama resident and over the marital res. However, a judgment as to a child's paternity and support is a personal judgment which requires that the court have personal jurisdiction over the person of the husband. Lightell v. Lightell, 394 So. 2d 41 (Ala. Civ. App. 1981). The primary issue before this court is whether the husband had sufficient contacts with this state so as to confer upon the courts of Alabama in

personam jurisdiction over him by reason of extraterritorial service of process upon the husband by certified mail. That jurisdictional problem was properly raised by the husband and the decision of the trial court thereon was adverse to him.

In the instant case, the husband had far less contact with Alabama than did the husband in Corcoran v. Corcoran, 353 So. 2d 805 (Ala. Civ. App. 1978). There it was held that such minimum contacts did not exist so as to allow personal jurisdiction in this state over the husband. The facts in the present case dictate the same result.

On this appeal, the husband seeks a reversal of those portions of the judgment (1) which pertain to the child in any respect, (2) to child support and (3) whereby the husband was ordered to pay

the wife's attorney's fees. For the reasons heretofore set forth, we are required to reverse as to those three aspects of the judgment. However, all of the other provisions of the judgment are hereby affirmed. The wife's request for an attorney's fee on appeal is denied.

The foregoing opinion was prepared by retired circuit judge Edward N. Scruggs while serving on active duty status as a judge of this court under the provisions of §12-18-10(e), Code 1975, and this opinion is hereby adopted as that of the court.

AFFIRMED IN PART; REVERSED IN PART AND REMANDED.

ALL THE JUDGES CONCUR.

IN THE CIRCUIT COURT OF
RUSSELL COUNTY, ALABAMA

BEVERLY JOAN GATEWOOD BRISLAWN,	)	
PLAINTIFF,	)	
VS.	)	CASE NO. DR-81-0209
CORNELIUS DENNIS BRISLAWN, JR.,	)	
DEFENDANT.	)	

ANSWER

COMES NOW the Defendant and for Answer to the Plaintiff's Complaint says as follows:

FIRST DEFENSE

The Defendant states that the Court lacks jurisdiction over the person of the Defendant and cannot render a personal judgment against this Defendant.

SECOND DEFENSE

The Defendant denies that he is the father of JOHN PHILLIP BRISLAWN, the minor child of the Plaintiff, and avers that he should not be required to contribute to the support and maintenance of said child.

THIRD DEFENSE

The allegations of paragraphs numbered 1, 2 and 3 of the Plaintiff's Complaint are Admitted. All other allegations of the Plaintiff's Complaint are denied and strict proof thereof is demanded.

BY: /s/ SAM E. LOFTIN
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ATTORNEY FOR THE DEFENDANT
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PHENIX CITY, AL
36868-2566

IN THE CIRCUIT COURT OF
RUSSELL COUNTY, ALABAMA

BEVERLY JOAN GATEWOOD BRISLAWN,	)	
PLAINTIFF,	)	
VS.	)	CASE NO. DR-81-0209
CORNELIUS DENNIS BRISLAWN, JR.,	)	
DEFENDANT.	)	

MOTION TO DISMISS UNDER
RULE 41(b)

COMES NOW the Defendant and moves the Court to Dismiss the Plaintiff's action against him for child support and paternity determination and for grounds therefor shows as follows:

1. The Court lacks personal jurisdiction over the Defendant.

2. The Defendant has had no contacts with the State of Alabama sufficient to establish the "minimum contacts" required for in personam jurisdiction under Alabama Rules of Civil Procedure, 4.2(a)(2).

3. The Due Process provisions of the Constitutions of the United States and of the State of Alabama require that this Court must have personal jurisdiction over the Defendant before rendering a personal judgment against him.

BY: /s/ SAM E. LOFTIN
SAM E. LOFTIN
ATTORNEY FOR THE
DEFENDANT
POST OFFICE BOX 2566
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36868-2566

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing Motion upon Attorney for Plaintiff, Hon. Kenneth L. Funderburk, by placing a copy of the same in a receptacle held in his name in the Office of the Clerk of Circuit Court of Russell County, Alabama, an extension of said attorney's office.

Done this the 11th day of February, 1982.

/s/ SAM E. LOFTIN
SAM E. LOFTIN

FILED IN OPEN COURT THIS THE 11TH DAY OF FEBRUARY, 1982.

/s/ WAYNE T. JOHNSON
JUDGE

DENIED.

/s/ WAYNE T. JOHNSON
JUDGE

No. 83-580

In The

Supreme Court of the United States

October Term, 1983

CORNELIUS DENNIS BRISLAWN, JR.,

Appellant,

vs.

BEVERLY JOAN GATEWOOD BRISLAWN,

Appellee.

On Appeal from the Supreme Court of Alabama

BRIEF IN OPPOSITION TO WRIT OF CERTIORARI

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No. 83-580

In The

Supreme Court of the United States

October Term, 1983

CORNELIUS DENNIS BRISLAWN, JR.,

Appellant,

vs.

BEVERLY JOAN GATEWOOD BRISLAWN,

Appellee.

On Appeal from the Supreme Court of Alabama

BRIEF IN OPPOSITION TO WRIT OF CERTIORARI

Appellee moves the Court to deny the Writ of Certiorari on the ground that the appeal does not present a substantial Federal question because the Alabama Supreme Court has correctly applied the universal standard to determine whether there are sufficient minimum contacts to afford in personam jurisdiction.

ARGUMENT

A. This Appeal Does Not Present a Substantial Federal Question.

Appellee moves the Court to deny the Writ of Certiorari on the ground it is from a decision of the Alabama Supreme Court which correctly applies the accepted standard to determine whether Alabama has in personam jurisdiction over Appellant.

The basis for this Brief in Opposition to Writ of Certiorari is more easily explained in the context of an accurate representation of the decision from which this appeal is taken. On page 16 of Appellant's Brief, he seeks to impress upon this Court that the lower Court "adopted another test, one which has not been sanctioned". Appellant does not bless us with a description of this unsanctioned test he contends the lower Court wrongfully applied to the case sub judice. However, on page 17 of Appellant's Brief, he misinterprets a finding of fact by the lower Court and characterizes it as a rule of law thusly: "Instead, the Court concluded that since Alabama was the last place in the United States where the parties had lived then Alabama was a proper forum." What the Alabama Court actually concluded was that Alabama was the *only* place in the United States where the parties lived together as man and wife. This is a finding of fact, not a rule of law.

The decision of the Alabama Supreme Court which is set out on pages 20 through 28 of the Appellant's Brief, is well written and clearly sets out the issues of this case.

The specific Alabama Rule of Civil Procedure which was applied to the *Brislawn* case is Rule 4.2(a)(1)(B). In applying the Alabama Rule of Civil Procedure to this

case, the lower Court relied upon *International Shoe Co. v. State of Washington,* 326 U. S. 310, 316, 66 S. Ct. 154, 158, 90 L. Ed. 95 (1945), and correctly quoted the Rule of *International Shoe Co.,* supra, case as follows:

> "[D]ue process requires only that in order to subject a defendant to a judgment *in personam,* if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" . . .

The jist of the Alabama decree in the case sub judice is that Mr. Brislawn had contacts with the State of Alabama sufficient to satisfy the constitutional requirement of fair play and substantial justice inasmuch as he resided in Alabama ten days with Appellant and then forthwith moved with her to Germany and then sent her in a pregnant condition back to Alabama from Germany. The lower Court's decision in the case sub judice does not make up some new test but simply finds from the facts of this case that it is fair to require Mr. Brislawn to defend himself in Alabama. Appellant, therefore, not only failed to recognize the standard test which was applied by the Supreme Court of Alabama but also failed to discern the difference in a "finding of fact" and a legal "test".

Further, the Alabama Supreme Court correctly concluded that the rule of "minimum contact" has been given broad interpretation by the Courts. The lower Court cites *Calaqaz v. Calhoun,* 309 F. 2d 248 (5th Cir. 1962), where ". . . it was pointed out that mere correspondence with persons in a state may establish sufficient contacts with the state to subject a nonresident to a suit in that state on a cause of action arising out of those contacts." (Page 26). The Alabama Supreme Court further cites

McGee v. International Life Insurance Co., 355 U. S. 220, 78 S. Ct. 199, 2 L. Ed. 2d 223 (1957), where a single transaction regarding an insurance contract provided the sufficient and necessary contacts to meet the constitutional requirements of "minimum contacts".

There is no logical or constitutional basis to conclude on the one hand that it is reasonable to require one to defend oneself in a state where one's only contact has been mere correspondence sent to that state, and on the other hand to conclude that Mr. Brislawn should not be required to defend himself in Alabama where he lived for ten days and which represents the only state in the United States of America where he and his wife cohabitated.

Can Mr. Brislawn honestly state to the Supreme Court of the United States that it is more reasonable to require Appellant to sue him for divorce, support and alimony in the State of Washington where she and the child have never been than it is to require Mr. Brislawn to defend himself in Alabama where he and his wife have lived together? Mr. Brislawn sent his wife back to Alabama while he was in Germany; not to the State of Washington.

The Supreme Court of Alabama has applied the appropriate law to the facts and its conclusion on the facts is entitled to be upheld by the United States Supreme Court. The issue decided by the Court below was correctly decided. Since the Supreme Court of Alabama has correctly applied the appropriate law to these facts, this case presents no substantial Federal question that is worthy of this Court's consideration.

———o———

CONCLUSION

For the reason stated above, this Writ of Certiorari should not be granted.

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PHILLIPS AND FUNDERBURK

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